PERDANA PARKCITY SDN BHD

v.

LEE HON KIT

HIGH COURT MALAYA, KUALA LUMPUR
ASMABI MOHAMAD JC
[CIVIL SUIT NO: S3-23-173-2008]
20 DECEMBER 2012

TORT: *Defamation - Slander - Whether words uttered were defamatory - Whether defences of justification, fair comment and qualified privilege available - Whether defendant knew defamatory words he uttered of plaintiff were untrue - Whether defendant's actions to defame plaintiff deliberate and malicious*

The defendant's wife owned a house in a residential area ('Desa Parkcity') developed by the plaintiff. A flood occurred in the area which damaged several houses including the defendant's wife's home and the defendant was of the opinion it was the plaintiff's fault. At a ceremony organised by the plaintiff for its business partners, the defendant barged in and repeatedly shouted 'Flood, developer no pay!' while brandishing in front of the guests' faces, copies of enlarged photographs of the flood. The plaintiff brought the instant action against the defendant, *inter alia*, for damages for slander. The plaintiff's witnesses testified that the flood was not the plaintiff's fault but due to the negligence of an independent contractor ('Infra Segi') that the plaintiff had hired to do the drainage works. This was confirmed by the plaintiff's expert witness, PW5, a geo-technical engineer. Evidence was adduced that Infra Segi had paid the defendant's wife an *ex-gratia* sum of RM100,000 as compensation. She was requested by the plaintiff, as were other affected residents, to submit her claims regarding the flood damages to her property for Infra Segi's consideration but despite several reminders the defendant's wife failed to respond. The plaintiff contended that the words uttered by the defendant at the ceremony were defamatory of the plaintiff and untrue and, by way of innuendo, suggested that the plaintiff had caused the flooding and then refused to compensate for the damage caused and that it was dishonest and unscrupulous. The plaintiff claimed its reputation and business suffered by the slander. The defendant pleaded justification, fair comment and qualified

A privilege as defences maintaining, *inter alia*, that the compensation his wife received was far less than the damage she actually suffered. He, however, failed to call his wife to testify at the trial.

Held (allowing claim and awarding plaintiff RM50,000 in
B **damages):**

(1) The words uttered by the defendant both in their natural and ordinary meaning and by way of innuendo were clearly defamatory of the plaintiff and were published to third parties. The plaintiff had discharged its onus of establishing its pleaded
C case against the defendant on balance of probabilities. (paras 47, 48 & 83)

(2) The defendant did not adduce any evidence to prove the truth of the defamatory words. The evidence showed the
D independent contractor involved with the drainage works had in fact assumed liability for the flooding incident and had paid RM100,000 to the defendant's wife. That it was the contractor's fault was established by the plaintiff's expert witness, PW5. The defendant faulted the plaintiff for the
E flooding based on his own theory but did not call his own expert to counter PW5's testimony. Given the evidence, the plaintiff could not be held responsible for the flooding and thus, the defence of justification failed. (paras 56, 57, 58, 59, 61 & 64)

F

(3) The evidence showed the plaintiff, acting as facilitator for the independent contractor, took all reasonable steps to ensure the defendant's wife submitted her claim for compensation supported by documents to justify her loss. However, the
G defendant and his wife had blatantly disregarded all attempts made by the plaintiff to assist them in obtaining compensation. Nevertheless, the defendant's wife received RM100,000 as *ex-gratia* compensation. The defendant did not call his wife to dispute that payment. (paras 62 & 63)

H

(4) The defence of fair comment failed because the defamatory words were not based on true facts. The defendant also could not rely on the defence of qualified privilege as he did not have an honest belief in the truth of the defamatory words.
I The defendant knew his wife had received RM100,000 in compensation. (paras 67, 68, 70 & 71)

(5) The defendant's actions were actuated by malice. Despite compensation having been paid, the defendant had maliciously executed his plan to embarrass the plaintiff in front of its business partners. He had planned the opportune moment to utter the defamatory words. He had used simple words together with photographs to reinforce the effect of the words used knowing there were guests at the function who were not proficient in English. There was no necessity for the defendant to have approached the plaintiff in that manner and at that instant because he could have submitted his claim in a civilised manner or, in the worst case scenario, he could have resorted to litigating his dispute at the proper forum if no compensation was forthcoming. (paras 37, 75 & 77)

Case(s) referred to:

Abdul Rahman Talib v. Seenivasagam & Anor [1964] 1 LNS 2 HC ***(refd)***

Ayob Saud v. TS Sambanthamurthi [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321 HC ***(refd)***

Bank of China v. Asiaweek Ltd [1991] 1 LNS 4 HC ***(refd)***

Chok Foo Choo v. The China Press Bhd [1999] 1 CLJ 461 CA ***(refd)***

Chop Kim Lee Seng Kee v. Yeo Kiat Jin [1955] 1 LNS 19 HC ***(refd)***

Datuk Bandar Dewan Bandaraya Kuala Lumpur v. Ong Kok Peng & Anor [1993] 3 CLJ 205 SC ***(refd)***

Hasnul Abdul Hadi v. Bulat Mohamed & Anor [1977] 1 LNS 33 HC ***(refd)***

Hussin Mohd Ali v. Ho Kay Tat & Anor [2004] 2 CLJ 407 HC ***(refd)***

Ismail Shamsudin v. Abdul Aziz Abdan [2007] 8 CLJ 65 HC ***(refd)***

Kian Lup Construction v. Hongkong Bank Malaysia Bhd [2002] 7 CLJ 32 HC ***(refd)***

Knupffer v. London Express Newspapers Ltd [1944] AC 116 ***(refd)***

Le Mercier's Fine Furnishings Pte Ltd & Anor v. Italcomm (Malaysia) Sdn Bhd [1996] 3 CLJ 590 HC ***(refd)***

Lee Kuan Yew v. Derek Gwyn Davies & Ors [1990] 1 CLJ 583; [1990] 3 CLJ (Rep) 691 HC ***(refd)***

Morgan v. Odhams Press Ltd [1971] 1 WLR 1239 ***(refd)***

S Pakianathan v. Jenni Ibrahim & Another Case [1988] 1 CLJ 771; [1988] 1 CLJ (Rep) 233 SC ***(refd)***

Soh Chun Seng v. CTOS-EMR Sdn Bhd [2004] 5 CLJ 46 HC ***(refd)***

Syed Hussin Ali v. Sharikat Penchetakan Utusan Melayu Berhad & Anor [1973] 1 LNS 146 HC ***(refd)***

Legislation referred to:

Defamation Act 1957, s. 5

For the plaintiff - Lai Wern Ching (Paul Kwong & Nathalie Sim with her); M/s Azman Davidson & Co
For the defendant - Yusrin Faidz Yusoff; M/s Faiz Leong & Chong

*[**Editor's Note**: Kindly note that on 1 August 2013, the Court of Appeal in Civil Appeal No: W-02-2403-10/2012 has set aside the decision of the High Court dated 18 September 2012.]*

Reported by Ashok Kumar

JUDGMENT

Asmabi Mohamad JC:

Background Facts

[1] The plaintiff, a property development company in the township known as Desa Parkcity, had brought an action against the defendant for damages for slander. By the amended statement of claim dated 17 November 2008 ("ASoC"), the plaintiff claimed for damages as a result of some words allegedly uttered by the defendant in the presence of the plaintiff's business joint venture partners from Vietnam which were defamatory of the plaintiff in the way of the plaintiff's said business.

[2] The plaintiff contended that the words "Hoo! Hoo! Hoo! Hoo! Flood, Developer no pay! Developer no pay! Developer no pay!" ('the alleged defamatory words') in their ordinary meaning meant and were understood to mean that the plaintiff did not pay any compensation following a flood. Further and alternatively the plaintiff pleaded by way of innuendo these words bore and were understood to bear the following meanings:

(i) The plaintiff was directly responsible for the flood and or had caused the flooding;

(ii) That the plaintiff had not made any payment by way of compensation to the residents affected by the flood; and

(iii) That the plaintiff is a dishonest and or unscrupulous developer.

[3] According to the plaintiff the alleged defamatory words were calculated to disparage the plaintiff in its business and had gravely injured and or damaged the plaintiff's reputation. The plaintiff prayed for damages to be assessed, interest, costs and an injunction to restrain the defendant, whether by himself, his servant or agents or otherwise, from further publishing or causing to publish the said similar words defamatory of the plaintiff (see para. 8 of the statement of claim (SOC)).

[4] The case proceeded by way of a full hearing with five witnesses having testified for the plaintiff and one witness for the defendant. After giving full consideration to the evidence, both documentary as well as testimonial, and the submissions by both learned counsels for the respective parties I allowed the plaintiffs' claim against the defendant as prayed and awarded compensatory damages in the sum of RM50,000 without the same having been assessed by the learned Deputy Registrar. After hearing a short submission on the issue of costs I had also ordered for costs of RM30,000 to be paid by the defendant to the plaintiff.

[5] The defendant being dissatisfied with the said decision appealed to the Court of Appeal against the whole of the said decision.

The Documents

[6] The relevant documents referred to in the course of this trial were as follows:

Document	Marking
(i) Pleadings	Document "A"
(ii) Common Bundle of Documents	Document "B1"
(iii) Plaintiff's Additional Bundle of Document	Document "B2"
(iv) Defendant's Additional Bundle of Document	Document "B3"
(v) Plaintiff's Additional Bundle of Document (2)	Document "B4"
(vi) Issues To Be Tried	Document "C"
(vii) Statement of Agreed Facts	Document "D"
(viii) Plaintiff's Opening Statement	Document "E"
(ix) Defendant's Opening Statement	Document "F"

Case For The Plaintiff

[7] Tan Bee Yoke, the Chief Executive Officer ("PW1") of the plaintiff testified that the defendant in the current suit was the husband of one Madam Lim Hooi Peng, the registered owner of property known as Unit PH002, Nadia Park Homes, No. 10,

Persiaran Residen, Desa Parkcity 52200 Kuala Lumpur. However both the defendant and his wife did not reside at this address but stayed at Unit Number PH003, Nadia Park Homes, No. 10, Persiaran Residen, Desa Parkcity 52200 Kuala Lumpur where Madam Lim is the registered tenant (Q & A 3 of the WSPW1).

[8] According to PW1 on 18 September 2008 at about 5.30pm the plaintiff was having a full dressed rehearsal in preparation for an occasion to receive the Vietnamese government delegation at the plaintiff's site, Desa Parkcity which had been scheduled on 19 September 2008. At the material time the plaintiff's Vietnamese Director and shareholder of the plaintiff's joint venture in Vietnam and Miss Thu Anh who is the personal assistant to Chief Executive Officer of the plaintiff's joint venture partners in Vietnam were present. At the time PW1 and the plaintiff's Vietnamese business associates were posing for a photography session at the entrance of the show gallery facing the lake, the defendant barged into the midst of the photography session and started to shout "Flood, developer no pay!". The defendant then placed copies of enlarged photographs of the flood in front of the faces of plaintiff's business associates (Q & A 30 to 34 of WSPW1).

[9] The events which was related by PW1 was confirmed by Baskaran a/l Subramaniam ('PW2'), the security manager of the plaintiff who was also present during the full dressed rehearsal. PW2 testified that the plaintiff had placed welcome banners from the main security check point up to the sales gallery (at pp. 22 - 25 of B2) and at other strategically located spots to welcome the plaintiff's Vietnamese delegates on 19 September 2008. PW2 confirmed the occurrence of the incident related by PW1 especially pertaining to the manner the defendant was said to have barged in during the photography session (at p. 96 of B1) and shouted "Flood, developer no pay!" PW2 had also confirmed the defendant had come armed with the copies of the enlarged photographs of the flood and had placed them in front of the plaintiff's Vietnamese business associates. As the defendant was causing some commotion at the plaintiff's full dressed rehearsal in the presence of the plaintiff's joint venture partners from Vietnam PW2 then led the defendant away from the group. As the defendant was led away from the group the defendant started waving and with his hands up and shouted "Hu! Hu! Hu! Hu! Hu!". The defendant further contended that he was not happy with the plaintiff as the plaintiff had not paid him the damages

caused by the flood. A police report pertaining to the incident was lodged by PW2 at the Kepong Police Station (at pp. 18 - 20 of B2) (Q & A 14 - 16 of WSPW2).

[10] Besides relating the events where the alleged defamatory words were said to have been uttered by the defendant, PW1 had also testified pertaining to the incidents of flooding in the said area of development. PW1 testified that Geo Management Sdn Bhd, an engineering consultant who was appointed to investigate the cause of flooding had issued a letter dated 18 July 2008 to Jabatan Penilaian dan Pengurusan Harta (at pp. 82 to 83 of B1) stating that the flooding incident was caused by an independent contractor, Infra Segi Sdn Bhd who was engaged for drainage works at the Central Park Lake. Ir Dr Yah Kim Chui ("PW5") who is an expert in the field of geo technical engineering had testified that he had investigated the cause of the flooding and his conclusions were as stated in his letter to Jabatan Penilaian dan Pengurusan Harta (at p. 82 of B1).

[11] PW1 further testified Infra Segi had agreed to pay *ex-gratia* advance payment to the residents to ease the residents of any hardship caused by the flooding incident, pending the investigation and approval of their insurance claim. The residents, the defendant's spouse included, were told to submit their claims and other supporting documents for purposes of submission to Infra Segi (see p. 3 of B2) for payment of compensation (Q & A 12 & 13 of WSPW1).

[12] The plaintiff was requested by Infra Segi to act as facilitator for the purpose of payment of compensation to the residents affected by the flooding. Despite having sent notices and several reminders to the defendant's wife to forward the supporting documents to Infra Segi for the purposes of payment of compensation the defendant's wife did not submit her claims to the plaintiff for processing.

[13] By a letter dated 13 June 2008 from the plaintiff, the defendant's wife was notified that Infra Segi had agreed to pay the defendant's wife RM10,000 as *ex-gratia* payment for Unit PH002. By a letter dated 13 June 2008 the plaintiff had notified the registered owner of Unit PH003 that the plaintiff was asked by Infra Segi to act as facilitator to disburse an advance *ex-gratia* payment for Unit PH003 for the sum of RM35,000 (at p. 5 of B2).

[14] A letter was also sent by the plaintiff to the defendant's wife to inform the defendant's wife of the *ex-gratia* payments for the two units were ready for collection (at p. 6 of B2) and that the plaintiff would require an authorisation letter from the registered owner of Unit PH003 for the defendant's wife to collect the *ex-gratia* payment on their behalf.

[15] Another letter was sent to the defendant's wife dated 1 July 2008 informing the defendant's wife that the defendant had verbally abused the plaintiff's Chief Executive Officer on 19 June 2008. In the same letter the defendant's wife was informed that her cheques for the advance payment were available for collection despite the fact that no supporting document was submitted to the plaintiff (at pp. 89 - 90 of B1). The plaintiff's records showed that despite being asked to submit her claim the defendant's wife failed and refused to submit the same for consideration (see pp. 7, 8 & 9, 10 & 11 of B2). The plaintiff had also caused the letter enclosing the cheques amounting to RM10,000 and RM35,000 respectively to be sent (at p. 91 of B1). These cheques were cleared for payment (at p. 121 of B1). The plaintiff had also made a second *ex-gratia* payment of RM55,000 on behalf of Infra Segi to the defendant's wife on a without prejudice basis and strictly without admitting liability for losses suffered as a result of the flooding. As the defendant's wife had not submitted her claims for purposes of adjustment by the adjuster, the plaintiff instructed the adjuster to proceed with the rest of the claims involving other residents. The defendant's wife was notified of this *vide* a letter dated 4 September 2008 (at p. 16 of B2). Further she was also informed that if she wished to submit the claims she could deal directly with the adjuster. However the defendant's wife had not made any attempts to submit her claims and or submit supporting documents to justify her claim to the plaintiff.

Case For The Defence

[16] Lee Hon Kit (DW1) confirmed that his wife is the registered owner for Unit Number PH002, Fasa 1B, Nadia Park Homes, Desa Park City, 52200 Kuala Lumpur and a registered resident of Unit Number PH003, Fasa 1B, No. 10, Persiaran Residen, Nadia Park Homes, 52200 Kuala Lumpur.

[17] In his examination-in-chief DW1 testified that before he shifted to Nadia Park Homes in 2007 there were two incidents of flooding. DW1 believed that the floods were due to poor drainage system. On 26 May 2008 there was another flood in the said area

where the water level had arisen to about three feet high causing extensive damage to DW1's and his wife's property, which loss was estimated at RM400,000 to RM500,000 (see photos at pp. 65 - 72 of B1). A police report was lodged by DW1 (at pp. 108 - 110 of B1).

[18] However the plaintiff denied that they were responsible for the flood and or had refused to pay compensation to the residents who were affected by it. The plaintiff had instead blamed a third party for the flood. Despite attempts having been made to meet with the plaintiff's personnel to resolve the issue of compensation the plaintiff's personnel had refused to meet DW1 and or pay compensation to the residents for the loss suffered as a result of the flooding (at p. 97 of B1).

[19] On 18 September 2008 DW1 had gone to the plaintiff's sales office to send two photographs of the flood to support the claim that there were damage to DW1's and his wife's property as a result of the flooding. At that time the senior management of the plaintiff were all gathered at the plaintiff's sales office for a photography session. DW1 was not able to hand the photographs to the senior management of the plaintiff as they had refused to attend to him. As DW1 was obstructed by the plaintiff's security personnel from pursuing his intention he became agitated and vented his frustration at the senior management who was present at the scene.

[20] The next day 19 September 2006 at about 4.30pm DW1 made his second attempt to deliver the photographs of the flood to the senior management of the plaintiff. On his way to the plaintiff's sales office he was physically detained by a few security personnel of the plaintiff. During this time DW1 showed them the photographs. These photographs were also pasted on his car. Khoo Wei Kiat (DW3) who was the plaintiff's project manager was also at the scene with his camera. Around the same time the plaintiff's solicitor was also present to serve on the defendant the summons and the said solicitors had wanted the process to be captured by DW3. As a result of which there was a tussle between DW1 and the plaintiff's security personnel. A police report was lodged the next day, 20 September 2008 (at pp. 111 - 112 of B1).

[21] According to DW1 his complaints were justified as there were incidents of floodings in the said area. The plaintiff was responsible for the flooding but had conveniently pushed the blame on a third party, Infra Segi. DW1 was not satisfied with the plaintiff as the plaintiff had denied responsibility and or paid compensation to his wife for loss caused by the flood. The *ex-gratia* payment paid to the defendant's wife was too small and did not commensurate with the damage and loss suffered by the family. The defendant was also dissatisfied with the manner the plaintiff handled the flood victims especially when the plaintiff had refused to give the defendant the feedbacks as to the steps and or solutions to be taken to prevent the recurrence of flood.

[22] The defendant had relied on the defence of justification, fair comment and qualified privilege.

The Issues To Be Tried

[23] It could be gleaned from the document marked as "C" there were 24 issues framed by both parties for this court's determination. I have taken the liberty to summarise these issues into the following broad issues:

(i) Whether the alleged defamatory words were defamatory of the plaintiff;

(ii) Whether the alleged defamatory words referred to the plaintiff;

(iii) Whether the alleged defamatory words were published to a third party;

(iv) Whether the defence of truth or justification, fair comments and qualified privilege were available to the defendant for the publication of the alleged defamatory words of the plaintiff and or concerning the plaintiff;

(v) Whether the alleged defamatory words were published by the defendant with malice; and

(vi) Whether the plaintiff is entitled to damages.

Applicable Law On Defamation

[24] The procedure in establishing a claim on libel has been well illustrated in the leading case of *Ayob Saud v. TS Sambanthamurthi* [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321; [1989] MLJ 315 where His Lordship Mohamed Dzaiddin J (as His Lordship then was) said:

> In our law on libel, which is governed by the Defamation Act 1957, the burden of proof lies on the Plaintiff to show *(1) the words are defamatory; (2) the words refer to the Plaintiff; and (3) the words were published*. Where a defence of qualified privilege is set up, as in the present case, the burden lies on the Defendant to prove that he had made the statement honestly, and without any indirect or improper motive. Then, if he succeeds in establishing qualified privilege, the burden is shifted to the Plaintiff in this case to show actual or express malice which upon proof thereof, communication made under qualified privilege could no longer be regarded as privileged: *Rajagopal v. Rajan* [1971] 1 LNS 117. (please see the highlighted portion for ease of reference).

[25] It could be gleaned from the above cited case and numerous other established cases as submitted by both learned counsels, in order to succeed in a claim founded on the tort of libel the following three elements must be proved by the plaintiff:

(i) that the alleged defamatory statements bear defamatory imputations;

(ii) that the alleged defamatory statements made reference to the plaintiffs; and

(iii) that there is publication of the alleged defamatory statements to a third party by the defendant.

[26] In the event a defence of qualified privilege is set up by the defendant, the burden is on the defendant to prove that he had made the statement honestly, without any indirect or improper motive. If the defendant succeeded in establishing their defence that the statement was made honestly and without any indirect and or improper motive, the burden would then shift to the plaintiff to show express malice. If the plaintiff succeeded in showing malice then the communication is no longer privileged.

Evaluation Of Facts And Findings Of The Court

Issue 1: Whether The Alleged Defamatory Letter Made Reference To The Plaintiff

[27] It is trite law that an essential element of the cause of action founded on the tort of defamation is that the words complained of should be published of the plaintiff. In a situation where the plaintiff is not named, the test is whether the words would reasonably lead people acquainted with the plaintiff to conclude that he was the person referred to in the alleged defamatory words (please see *Knupffer v. London Express Newspapers Ltd* [1944] AC 116).

[28] David Price and Korieh Duodo, co-authors of the book *Defamation Law, Procedure & Practice* 3rd edn. state that the test to be applicable is " … whether reasonable readers generally or reasonable reader with the particular knowledge would understand the statement to refer to the claimant. Mere conjecture that it might refer to the claimant is insufficient".

[29] In *Morgan v. Odhams Press Ltd* [1971] 1 WLR 1239, Lord Donovan at p. 1263 states:

> It is always for the Plaintiff to prove that the defamatory words were published of and concerning him. The onus is firmly upon him, and if he does not discharge it, he has no cause of action.

[30] In the case of *Knupffer v. London Express Newspapers Ltd* [1944] AC 116 His Lordship Viscount Simon LC emphasised that in handling a cause of action premised on a tort of defamation the following two questions ought to be considered by the court:

(i) Firstly, a question of law, that is, could the article complained of having regard to their language, be regarded as capable of referring to the plaintiff?; and

(ii) Secondly, a question of fact, that is, could the article complained of, in fact, lead reasonable people who are acquainted with the plaintiff to conclude that it does refer to the plaintiff?

[31] With the above principle in mind, I will now proceed to evaluate the alleged defamatory words in order to ascertain if the said words made reference to the plaintiff.

[32] It is trite that it is not necessary for the plaintiff to show that the defendant intended to refer to the plaintiff. It is sufficient if reasonable people would think that the alleged defamatory words to be defamatory of the plaintiff. It was also immaterial if the defendant did not intend to defame the plaintiff.

[33] The alleged defamatory words uttered by the defendant in their natural and ordinary meaning meant and or were understood to mean that "the plaintiff did not make any compensation following a flood". The defendant had used the word "developer" and anybody hearing this will have no hesitation to conclude that the defendant was referring to the plaintiff which was the developer for the Nadia Homes at the Parkcity project.

[34] As stated in the cases of *Bank of China v. Asiaweek Ltd* [1991] 1 LNS 4; [1991] 2 MLJ 505 at p. 194 (MLJ) and *Le Mercier's Fine Furnishings Pte Ltd & Anor v. Italcomm (Malaysia) Sdn Bhd* [1996] 3 CLJ 590 at p. 203 the natural and ordinary meaning of the words include the inferred/implied or indirect meaning.

[35] The plaintiff alleged that by way of innuendo the alleged defamatory words uttered meant and or understood to mean the following:

(i) The plaintiff was directly responsible for the flood and or had caused the flooding;

(ii) That the plaintiff had not made any payment by way of compensation to the residents affected by the flood; and

(iii) That the plaintiff is a dishonest and or unscrupulous developer.

[36] On examining the alleged defamatory words and on my evaluation of the testimony of the PW1 & PW2 I have no hesitation to rule that the said defamatory words in their natural and ordinary meaning meant or understood to mean that the plaintiff did not make any payment as compensation to the flood victims as pleaded by the plaintiff in para. 5 of the ASoC. By way of innuendo, it carried the meanings as pleaded by the plaintiff in para. 6 of the plaintiff's ASoC. The defendant had uttered the alleged defamatory words during the rehearsal and the photography sessions in the presence of PW1, PW2, the two representatives from the plaintiff's joint venture partners from Vietnam and many other people who were involved with the rehearsal session. As the

defendant was uttering the alleged defamatory words the defendant was seen shoving to the faces of those present during the photography session the photographs of the flooding that he had deliberately brought to the scene.

[37] The defendant had also used simple words "Flood, developer no pay!" and had used the photographs to reinforce the effect of the words used because the defendant knew that there were people other than Malaysian who were not proficient in the English language were present during the rehearsal. I am satisfied that the element of reference, a pertinent condition to be established in a case premised on the tort of defamation had been satisfied. The defendant had in fact planned the opportune moment to utter the alleged defamatory words at the time he barged into a photography sessions during the plaintiff's rehearsal ceremony to receive the Vietnamese delegation. This was clearly illustrated by the photograph (at p. 96 of B1) of the staff of the plaintiff including PW1 and the plaintiff's business associates from Vietnam posing at the entrance of the show gallery facing the lake. Both PW1 and PW2 had testified the date, time and setting of the incident where the alleged defamatory words were uttered.

Issue - Whether The Alleged Defamatory Letter Was Defamatory Of The Plaintiff

[38] In the case of *Kian Lup Construction v. Hongkong Bank Malaysia Bhd* [2002] 7 CLJ 32; [2002] 7 MLJ 283 the court has stated that whether the words complained of, are defamatory lied on the nature of the statement in that it must have a tendency to affect the reputation of a person. In the book the *Law of Defamation in Singapore and Malaysia*, 2nd edn. by Keith R Evans, it was stated that in applying these various tests, the court must look to a particular group that is, in whose eyes must the estimation of the plaintiff be lowered before the words are said to be defamatory. The court went on further to state that in determining the issue the court does not look to the actual effect of the allegations on the person's reputation, or the meaning of the words actually understood or taken by the listeners. It is enough that the listeners actually take the words in a defamatory sense, for they must be reasonably justified in so understanding the words before they are found to be defamatory.

[39] The plaintiffs alleged that the alleged defamatory words were defamatory of the plaintiffs and had tarnished its character, credibility and business reputation. The plaintiff claimed that the

publication of the said defamatory words concerning them had caused embarrassment to the plaintiff.

Whether The Said Words Had Defamatory Imputation And Or Reflected On The Plaintiffs' Reputation

[40] It is now opened to this court to analyse the alleged defamatory statements and determine if the alleged defamatory words had defamatory imputation and or reflect on the plaintiff's character, credibility and reputation as a business entity as pleaded by the plaintiff in paras. 5 & 6 of the ASoC.

What Is Defamatory Imputation?

[41] In *Syed Hussin Ali v. Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] 1 LNS 146 for instance, Mohamed Azmi J (as he then was) said:

> Thus the test of defamatory nature of a statement is its tendency to excite against the Plaintiff the adverse opinion of others, although no one believes the statement to be true. Another test is: would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally? The typical type of defamation is an attack upon the moral character of the plaintiff attributing crime, dishonesty, untruthfulness, ingratitude or cruelty.

[42] In the book entitled *Gatley on Libel and Slander* 11th edn. it was stated that:

> There is no wholly satisfactory definition of defamatory imputation. Any imputation which may tend 'to lower the plaintiff in the estimation 'of any right thinking members of society generally' 'to cut him off from society' or 'to expose him to hatred, contempt to ridicule' is defamatory of him. An imputation may be defamatory whether or not it is believed by those to whom it is published.
>
> ...
>
> A defamatory imputation is one to a man's discredit, or which tends to lower him in the estimation of others, or to expose him to hatred, contempt or ridicule, or to injure his reputation in his office, trade or profession, or to injure his financial credit. The standard of opinion is that of a right-thinking person generally. To be defamatory an imputation need have no actual effect on a person's reputation; the law looks only on its tendency.

[43] In *Chok Foo Choo v. The China Press Bhd* [1999] 1 CLJ 461 His Lordship Gopal Sri Ram said:

> In my judgment, the test which is to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the plaintiff any dishonourable or discredible conduct or motives or lack of integrity on his part? If the question invites an affirmative response, then the words complained of are defamatory ...

[44] It has to be borne in mind that in arriving at the meaning of the alleged defamatory words, the whole context of the alleged defamatory words would have to be examined in order to ascertain whether these words were defamatory of the plaintiff. In *Soh Chun Seng v. CTOS-EMR Sdn Bhd* [2004] 5 CLJ 46 His Lordship Ramly Ali J (as His Lordship then was) quoted *Gatley on Libel and Slander* 9th edn. as reproduced below:

> In *Gatley on Libel and Slander*, 9th Edition at page 96 the learned author states: It is necessary to take into consideration, not only the actual words used, but the context of the words.
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> At pg 97, the learned author continues:
>
> It follows from the fact that the context and circumstances of the publication must be taken into account and that the Plaintiff cannot pick and choose parts of the publication which, standing alone, would be defamatory. This or that sentence may be considered defamatory, but there may be other passages which take away the sting.
>
> Our courts have also pronounced the same principle to be the law applicable in Malaysia. In *Ratus Mesra Sdn Bhd v. Shaikh Osman Majid & Others* [1999] 8 CLJ 499, Kamalanathan Ratnam J at page 504 stated that:
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> > I agree that the test to be applied when considering a statement is defamatory of a Plaintiff is an objective one that it must be given a meaning in which a reasonable man would understand it. (see: *Gatley on Libel & Slander*, 9th Edition para 3.12) and that for this purpose, that is, in considering whether the words complained of contained any defamatory imputations, it is necessary to consider the whole article.

[45] As had been illustrated by the above mentioned cases and authorities the test to be applied in this scenario is an objective test and to be decided by a judge having considered the entire alleged defamatory words and the context in which it was made.

In order to be defamatory of the plaintiffs the alleged defamatory words must contain an imputation which tends to lower the plaintiff in the estimation of right-thinking members of society generally.

[46] Therefore in the case at hand, the test whether the alleged defamatory words were in fact defamatory is what meaning or meanings would it convey to an ordinary and reasonable person. It is an objective test on how the words would be understood. The plaintiffs had set out the natural and ordinary meanings of the words at para. 5 of the ASoC. What would an ordinary reasonable person construe the words to mean or to convey. Do the words calculate to expose the plaintiff and or bear defamatory imputation to the plaintiff's discredit, "or which tend to lower him in the estimation of others, or to expose him to hatred, contempt or ridicule, or to injure his reputation in his office, trade or profession, or to injure his financial credit. The standard of opinion is that of a right-thinking person generally" as illustrated by the book *Gatley on Libel and Slander* 11th edn.

[47] Upon perusal of the alleged defamatory words it is obvious that the said alleged defamatory words were clearly defamatory of the plaintiff. The alleged defamatory words had the meaning and effects as stated at paras. 5 and 6 of the ASoC. The words were clear and transparent and did not require any construction.

[48] The contents of the alleged defamatory letter bore the meaning in the manner illustrated by the plaintiffs in paras. 5 and 6 of the ASoC. My evaluation of the words as mentioned herein clearly showed that they were defamatory of the plaintiff. These words in their ordinary and natural meaning were defamatory of the plaintiffs. The alleged defamatory words connote the meanings illustrated in para. 5 and 6 of the ASoC. The alleged defamatory words to my mind in its ordinary meaning and or by way of innuendo imply to the ordinary reasonable man the meaning as illustrated by the plaintiff in paras. 5 and 6 of the ASoC.

[49] In view of the above issue (ii) too must be answered in the affirmative.

Issue 3: Whether There Is Publication

[50] The last ingredient to be satisfied by the plaintiff was whether the defendant had caused the alleged defamatory words to be published to a third party. In *S Pakianathan v. Jenni Ibrahim & Another Case* [1988] 1 CLJ 771; [1988] 1 CLJ (Rep) 233; [1988] 2 MLJ 173, the then Supreme Court had this to say:

> In order to constitute publication, the defamatory matter must be published to a third party and not simply to the plaintiff. By publication is meant making known of the defamatory matter, after it had been written, to some person other than the person to whom it is written. The uttering of a libel to the party libeled is no publication for the purpose of a civil action.

[51] The plaintiff had pleaded that the defendant had uttered the alleged defamatory words during the rehearsal in preparation for the visit of the plaintiff's joint ventures partners and officers from government from Vietnam in the presence of PW1 and PW2. As testified by PW1 and PW2, on 18 September 2008 at about 5.30 to 6pm Mr Kien Pham who is the Director and shareholder of plaintiff's joint venture in Vietnam and Miss Thu Anh the personal assistant to Chief Executive Officer of plaintiff's joint venture in Vietnam were present.

[52] The defendant had admitted in his witness statement that on the day of the incident the defendant had in fact gone to the place of incident with the photographs and he had also admitted that at the material time he was agitated and vented his frustrations. This piece of evidence corroborated the testimony of PW2 pertaining to the defendant's behaviour and that a small commotion had ensued at the time he was led by PW2 from the scene of the incident. This was further supported by the police report lodged by PW2 (at p. 20 of B2).

[53] Based on the aforesaid I am satisfied that the plaintiff had on the balance of probabilities proven that the words in the alleged defamatory statements were defamatory of the plaintiff and that the defendant had published or caused them to be published of the plaintiff. Hence the plaintiff had discharged the onus of proving the three ingredients stated by His Lordship Mohamed Dzaiddin J in *Ayob Saud* (*supra*).

[54] Once the plaintiffs had satisfied the court of the three ingredients as discussed above had been proven the burden then shifted to the defendants to prove their pleaded defence of the truth/justification, qualified privilege and fair comment.

Defence Of The Truth/Justification

[55] Now I turn to the defendant's defence of justification. The defendants' alleged that the alleged defamatory words were in fact true and the defendant was justified in uttering the same about the plaintiff. With regards to this defence put forth by the defendant, as had been illustrated in the case of *S Pakianathan v. Jenni Ibrahim* (*supra*) the burden lies on the plaintiff to establish justification by proving the defamatory imputation was in fact true.

[56] Except for what was pleaded the defendant did not adduce any evidence to prove the truth of the alleged defamatory words. In short the defendant did not establish anything beyond what was stated in his defence.

[57] Based on the evidence both testimonial and documentaries Infra Segi, the contractor which was involved with the drainage works at the development had in fact assumed liability for the flooding incident and had made payments of the sum of RM100,000 to the defendant's wife (at pp. 8 - 11, 13 - 14 of B2 and p. 92 of B1).

[58] Further Ir Dr Yah Kim Chui who is an expert in the area of geo technical engineering and a person who had personal knowledge of the actual position at site had testified that based on his investigation at the site it was Infra Segi, the contractor who was responsible to have caused the drainage system to be temporarily blocked and diverted the drainage to another pond when undertaken repair work at the Central Lake. Infra Segi had installed a pump which was supposed to have been switched on by them during a downpour. Unfortunately during the downpour on 26 May 2008 Infra Segi had not switched on the said pump and this had resulted in the backflow of the rain water to the Nadia Park Homes. As a result of which there was flooding at the said area. PW5 was aware of the situation faced by Nadia Park Homes as he was requested by the plaintiff to investigate the cause of the flooding and to recommend the solution as well as the rectification works to be done.

[59] The defendant had faulted the plaintiff for the flooding but had not adduced any evidence through his expert to counter the testimony of PW5. The defendant's allegation that the plaintiff was the cause of the flooding was not supported by the evidence of another expert but merely the defendant's own theory based on his experience on construction works that he was involved with. The defendant testified that despite the fact that he did not have the paper qualification but based on his technical experience whilst working as security personnel he had all the technical knowledge about construction and was in a position to give evidence pertaining to the technical aspect of engineering and the cause of the flooding at Nadia Park Homes.

[60] The defendant had also testified pertaining to the two earlier floods at Nadia park Homes but by his own evidence the defendant testified that he did not have personal knowledge about the incidents of flooding as at the time the floods occurred he had not yet moved to the locality. According to the defendant the information about the incident of flood was told to him by his neighbours. It is obvious that his piece of evidence pertaining to incidents of floods tantamount to hearsay evidence and ought to be rejected by this court.

[61] Since there was credible evidence pertaining to who was responsible for the flooding from the plaintiff's expert and uncontradicted by the defendant through his expert, I accepted the evidence of PW5 that the flooding was caused by Infra Segi, an independent contractor who was involved with the drainage works at Parkcity. Hence the plaintiff as the employer of Infra Segi ought not to be held responsible for the flood caused by an independent contractor (see *Datuk Bandar Dewan Bandaraya Kuala Lumpur v. Ong Kok Peng & Anor* [1993] 3 CLJ 205; [1993] 2 MLJ 234 at p. 510).

[62] As I had illustrated earlier there was evidence before me that the defendant had been paid compensation for the loss caused by the flooding. I am also satisfied from the evidence that the *ex-gratia* compensation had been duly paid by Infra Segi to the defendant. The court had also considered the evidence of the plaintiff that despite having been asked by the plaintiff to submit the claims and supporting documents to justify the loss suffered by the defendant as result of the floods, the defendant had failed and or neglected to forward the relevant documents to the adjusters for assessment of damages. The evidence before me

showed that the plaintiff who was acting as a facilitator for Infra Segi had taken all reasonable steps to ensure that the defendant's wife submit her claim for compensation to be supported by documents for purposes of payment but the defendant and or his wife had blatantly disregarded all attempts made by the plaintiff to assist them in effecting payment of compensation.

[63] As regards to whether the plaintiff had paid compensation to the defendant for damages suffered as a result of the flood, I had observed the defendant whilst he was in the witness box. He was very evasive during cross-examination by learned counsel for the plaintiff especially when asked about the RM100,000 paid to his wife as compensation for damages caused by the flood. Despite the same had been paid as illustrated by documentary evidence the defendant was evasive. The defendant did not call his wife who was the registered owner of Unit PH002, who would be in a better position to explain to the court about these payments to corroborate his evidence that the wife was never paid compensation for damage caused by the flooding.

[64] Hence the defendant's allegation that the developer had not paid compensation is devoid of any merits. Based on the above the defendant could not rely on the defence of justification as pleaded in his ASoC.

Defence Of Fair Comment And Qualified Privilege

[65] As had been illustrated in a number of authorities, the test as to whether the alleged defamatory words uttered by the defendant are facts or comment is an objective one, namely whether an ordinary, reasonable person hearing the alleged defamatory words would understand them to mean as comments or statements of facts (see *Lee Kuan Yew v. Derek Gwyn Davies & Ors* [1990] 1 CLJ 583; [1990] 3 CLJ (Rep) 691; [1990] 1 MLJ 390). In *Hussin Mohd Ali v. Ho Kay Tat & Anor* [2004] 2 CLJ 407; [2004] 3 MLJ 140 the court held that the words complained about must be fair comment as opposed to statements of fact.

[66] Turning now to the issue at hand, it is undoubtedly clear that applying the objective test, the alleged defamatory words which was followed by the defendant's action to shove the photographs of the flood on the faces of the plaintiff's business joint venture partners from Vietnam were statement of facts and not fair comments as claimed by the defendant. Further it had been illustrated in a number of authorities as submitted by learned

counsel for the plaintiff for the defendant to succeed on the defence of fair comments the comments must be based on true facts (see *Hasnul Abdul Hadi v. Bulat Mohamed & Anor* [1977] 1 LNS 33; *Chok Foo Choo v. The China Press Bhd* [1999] 1 CLJ 461).

[67] Based on the evidence adduced during trial I am satisfied that the alleged defamatory words were not fair comments as claimed by the defendant as the evidence showed that it was not based on true facts. Therefore the court could not consider the alleged defamatory words as fair comments as claimed by the defendant as the same were based on true facts.

[68] Hence it is my firm finding that the defendant could not rely on the defence of fair comments to escape liability.

Defendant's Defence Of Qualified Privilege

[69] In order to succeed under this head of defence the defendant must prove that he had a legal, social and moral duty to make the alleged defamatory words to a person with some corresponding duty to receive and that the defendant had an honest belief in the truth of the information conveyed (see *Chop Kim Lee Seng Kee v. Yeo Kiat Jin* [1955] 1 LNS 19; [1956] 1 MLJ at p. 568). In the same case it had been held that the test is to whether a right-minded man in his position would have considered his duty to speak.

[70] The evidence adduced during the trial showed that the defendant in the case at hand could not be said to have an honest belief that the alleged defamatory words uttered, which was accompanied by the show of the photographs on the face of the plaintiff's Vietnamese joint venture partners at the time and place of incident as the defendant had the information that his wife had in fact been paid RM100,000 as compensation. The defendant and or his wife had failed to prove that they had submitted their claims for compensation and the same was rejected by the plaintiff. The plaintiff had shown sufficient evidence on the standard required by the law that they had discharged their duty as facilitator for Infra Segi for purposes of payment by sending notices to the defendant's wife to submit the claim followed by reminders when the same was not forthcoming. However the defendant's wife had chosen to ignore the request and up to the case was heard by this court no claim was

submitted by the defendant's wife. Further the fact remained that the defendant's wife had in fact been paid compensation of RM100,000.

[71] On the evidence before me I am satisfied that the defendant could not rely on the defence of qualified privilege pleaded by him on the standard required by the law.

Whether The Utterance Of The Alleged Defamatory Words Actuated By Malice

[72] Notwithstanding what I had stated above and for the sake of completeness I would proceed to discuss the issue of malice. What amounts to malice had been succinctly stated in the case of *Abdul Rahman Talib v. Seenivasagam & Anor* [1964] 1 LNS 2 as follows:

> Actual malice does not necessarily mean personal spite or ill-will. Malice in the actual sense may exist, even though there may be no spite or desire for vengeance in the ordinary sense. Any indirect motive other than a sense of duty is what the law calls malice. Malice means making use of the occasion for some indirect purpose. If the occasion is privileged it is so for some reason, and the defendant is only entitled to the protection of the privilege if he uses the occasion for that reason. He is not entitled to the protection if he uses the occasion not for reason which makes the occasion privileged, but for an indirect or wrong motive or an improper motive, some motive other than that which alone would excuse him-some indirect motive not connected with the privilege.
>
> The existence of indirect motive or malice may be proved by extrinsic evidence, that is something outside the libel itself, eg, by expressions of personal spite or ill-will towards the plaintiff or by threats made against him, or by showing that the defendant had some previous quarrels with the plaintiff, or brought unsuccessful actions against him. So anything that shows that the plaintiff and the defendant lived on bad terms may bear on the issue of malice.

[73] Perhaps it would be appropriate at this juncture to scroll the facts related by the plaintiff's witnesses to ascertain if the defendant's action was actuated by malice:

(i) On 12 February 2008 the defendant's wife bought Nadia Park Homes Unit Number PH002 at No. 10, Persiaran Residen, Desa Parkcity 52200 Kuala Lumpur. Defendant and his wife stayed at a rented unit where his wife was a registered tenant

A at No. PH003, Nadia Park Homes Unit Number PH002 at No. 10, Persiaran Residen, Desa Parkcity 52200 Kuala Lumpur (pp. 52-63 of B1) (Q & A 5 of WSDW1 (a)).

(ii) Incident of flooding at Nadia Park Homes on 26 May 2008.

B (iii) 19 June 2008 at about 7pm the defendant went to the plaintiff's office but found the office closed. Defendant was agitated and started to shout profanities. He then proceeded to the waterfront to confront the plaintiff's CEO who was dining with a friend ((Q & A 8 of WSPW2) & pp. 104 to 107 C of B1).

(iv) *Ex-gratia* payment of RM45,000 was made by Infra Segi to the defendant's wife on 8 July 2008 (pp. 8 - 11 of B2).

D (v) *Ex-gratia* payment of RM55,000 made to the defendant's wife on 16 July 2008 (pp. 13 - 14 of B2).

(vi) The incident of the defendant barging into the photography sessions during the full dressed rehearsal in preparation for the E visit by the Vietnamese delegates and uttering the alleged defamatory words and at the same time shoving the photographs of the flood to the faces of the plaintiff's Vietnamese joint venture partners on 18 September 2008 (WS-PW1 Q & A 30 - 34, WSPW2 Q & A 9; 96 of B1 and at p. 20 of B2). The F evidence showed that the plaintiff had placed banners all over the vicinity of Parkcity to welcome the plaintiff's joint venture partners from Vietnamese (see WS-PW2 Q & A 13; pp. 22, 23, 24, 25 of B2; pp. 93 - 96 of B1).

(vii) Defendant attempted to gate-crashed the welcoming ceremony G for the plaintiff's Vietnamese joint venture partners on 19 September 2008. Defendant seen waiting at a car. As there were policemen and security personnel around the defendant did not pursue his intention to lodge peaceful protest. However he pasted photographs of the flooding on to his car.

H **[74]** The incident of the alleged flood occurred on 26 May 2008. By 16 July 2008 the defendant's wife had been paid her *ex-gratia* payment in the sum of RM100,000 by Infra Segi and these payments were facilitated by the plaintiff. The defendant's wife had I been told to submit her claims to be supported by documentary proof to show her loss and she had not made any attempts to submit her claim for purposes of assessment by the adjusters.

Further the incident of flood occurred on 25 June 2008 which happened about three months prior to day the alleged defamatory words were uttered. By looking at all these facts there was no reason for the defendant to fault or spike the plaintiff. Any anger or frustrations harbored at the plaintiff due to the flooding would have subsided by the 18 September 2008 as three months had passed.

[75] However the defendant was still harboring anger at the plaintiff for reasons known to him. The events and the manner the 18 September 2008 incident happened were as if it had been engineered by the defendant for indirect or wrong purpose. The defendant had planned the opportune moment to utter the alleged defamatory words to cause maximum embarrassment to the plaintiff without any basis and at the crucial moment when the plaintiff's foreign joint venture partners were at the scene. In fact there was no necessity for the defendant to approach the plaintiff in that manner and at that instant because all that the defendant could do was to submit his claim in a civilised manner just like other residents of Nadia Park Homes and or in the worst case scenario to resort to litigate the dispute in the proper forum if no compensation was forthcoming.

[76] The defendant knew that the plaintiff was receiving its business partners from Vietnam as banners about the said visit were placed all over the vicinity as shown at pp. 22-25 of B2. If the defendant's intention was genuine he could have gone to the plaintiff's office at a more convenient time to submit the photographs when the office was opened but not at the verge of the photography sessions and in the presence of the plaintiff's Vietnamese joint ventures partners. Further the choice of brief English words were used "Flood, developer no pay!" was deliberate as the Vietnamese are known to be non English speaking people. The defendant had brought along the photographs of the incident of flood with the intention for the Vietnamese to visualize and understand and grasp the message to be conveyed as illustrated at paras0. 5 and 6 of ASoC.

[77] Despite having been paid RM100,000 as *ex-gratia* payment and having deliberately neglected and or refused to submit the claim for processing, the defendant had his own agenda to maliciously execute his plan aimed at embarrassing the plaintiff in front of their business partners. This clearly demonstrated that the

defendant had an axe to grind with the plaintiff. Based on the aforesaid I am satisfied that the defendant's action was actuated by malice.

Whether The Plaintiff Is Entitled To Damages

[78] Section 5 of the Defamation Act 1957 provides that for an action premised on a tort of slander pertaining to words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication the plaintiff is not required to allege or prove special damages whether or not the words are spoken of the plaintiff in the way of his office, profession, calling trade or business. In short the plaintiff is not required to prove special damages (see *Ismail Shamsudin v. Abdul Aziz Abdan* [2007] 8 CLJ at p. 65).

[79] The manner the words were uttered in the presence of the plaintiff's Vietnamese joint venture partners who were on visit to the plaintiff's development site had the effect of disparaging the plaintiff in their trade or business. Any reasonable person hearing these words would have no difficulty to conclude that the plaintiff was being disparaged in their trade or business.

Other Ancillary Issues

Defendant's Demeanor

[80] I had observed the defendant whilst in the witness box and found the defendant to be an arrogant and untruthful witness. He pretended not to understand Bahasa Melayu and opted to give evidence in Mandarin. However his pretence could be detected by the spontaneous manner he answered the question posed to him by learned counsel without even waiting for the same to be interpreted to him by the Chinese interpreter. The defendant appeared very evasive and did not admit payments were made and received by his spouse despite glaring documentary evidence having been adduced in court. When questioned about the payment his flat answer was "Saya tidak tahu". At one instant the defendant said that he did not know about the payment and in the next breath he testified that the payment of compensation paid to his wife was not sufficient and did not commensurate with the loss caused by the flood. Despite saying that compensation was not paid and having been asked to submit his claim for

assessment the defendant admitted that his wife had not made any claims for compensation as they intended to pursue the claim in court after the trial of this action.

[81] On the whole having listened to the defendant and having evaluated the defendant's testimony I was satisfied that the defendant was not a credible witness and appeared to be arrogant and evasive.

[82] Based on the foregoing I am satisfied that the plaintiffs had discharged the onus placed on them by the law to prove their pleaded case, which was on the balance of probabilities. I therefore hold the defendant liable to the plaintiff for the tort of defamation as pleaded.

Conclusion

[83] On the totality of the evidence adduced by the plaintiff through their witnesses both testimonial and documentary and having evaluated the evidence of the defendant I am satisfied the plaintiff had discharged the onus of establishing their pleaded case against the defendant on the balance of probabilities. The alleged defamatory words made reference to the plaintiff and were defamatory of the plaintiffs and these words were published to third parties. Hence I allowed the plaintiff's claims and awarded compensatory damages of RM50,000 plus costs of RM30,000 to be paid by the defendant to the plaintiff. In arriving at the above decision I had carefully considered the evidence adduced by the plaintiff and the defendant both testimonial as well as documentary, the submissions by the plaintiff as well as the defendant and the authorities tendered in support of their respective submissions.

[84] I would like to express my sincere appreciation to both learned counsels who had diligently and professionally conducted the trial before me and assisted me with their well researched submission to enable me to dispose this case.